

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JANE DOE,)
Plaintiff,)
v)
KIRKWOOD R-7 SCHOOL) Cause No. 4:21-cv-1130
DISTRICT and)
JOHN "JACK" COLLIER,) JURY TRIAL DEMANDED
Defendants.)

NOTICE OF REMOVAL

COMES NOW Defendant KIRKWOOD R-7 SCHOOL DISTRICT, by and through Gerard T. Noce and Justin L. Assouad of Hepler Broom LLC, their attorneys, and hereby submit this Notice of Removal in accordance with 28 USC §§ 1331 and 1446, for removal of this action from the Circuit Court of St. Louis County, State of Missouri to the United States District Court for the Eastern District of Missouri, Eastern Division, pursuant to 28 USC §§ 1331 and 1446(a) and (b). In support of this Notice of Removal, said Defendants state:

1. This civil action was filed on July 16, 2021 in the Circuit Court of St. Louis County, Missouri, as Cause No. 21SL-CC03211, and arises out of the alleged sexual abuse of Plaintiff Jane Doe by a former Kirkwood School District employee (now deceased) named John “Jack” Collier. A copy of Plaintiff’s Petition is attached hereto as Ex. 1.

2. Defendant KSD was served with summons and a copy of the Petition on September 10, 2021. *See* Return of Service of Kirkwood R-7 School District attached as Ex. 2.

3. This Notice of Removal is timely in that it is being filed within thirty (30) days of the date upon which KSD was served with summons and a copy of the Petition. *See* 28 U.S.C. § 1446(b)(1).

4. Defendant KSD removes this case to the United States District Court for the Eastern District of Missouri based upon federal questions raised in Plaintiff's Petition. 28 U.S.C §1331.

5. Specifically, Count IV of Plaintiff's Petition cites to 42 U.S.C. §1983 in claiming constitutional due process, constitutional discrimination based on gender, and Fourth Amendment (unreasonable seizure) violations. *See* Ex. 1, Count IV ¶68. In addition, Count III of Plaintiff's Petition asserts a Title IX discrimination claim. *See* Ex. 1, Count III.

6. Also filed with this Notice of Removal is a true and correct copy of all process, papers, exhibits, pleadings and orders served upon Defendants in this action, a Notice to State Court of Filing a Notice of Removal acknowledged and filed in the Circuit Court of St. Louis County, Missouri, and the Notice to the Plaintiff of Filing a Notice of Removal.

7. Finally, Defendant KSD notes that the naming of "Jack Collier" as a defendant with the allegation that, "based upon information and belief," Collier "was/is" a resident of Missouri (Ex. 1, ¶3), has no bearing on this Court's subject matter jurisdiction. This is so for several reasons:

- i) Jack Collier died in 2006.¹ KSD asks this Court to take judicial notice of the fact that Collier died in 2006. A true and accurate copy of Jack Collier's obituary notice published in the St. Louis Post-Dispatch is attached hereto as Ex. 3. *See Wilson v. Gordon & Wong Law Group, P.C.* 2013 WL 6868976 (E.D. Cal. 2013)(noting that a federal district court may take judicial notice of the fact that a person is deceased based on an obituary).
- ii) A dead person may not "sue, be sued, or be joined as a party in a lawsuit." *LN Management, LLC v. JP Morgan Chase Bank, N.A.*, 957 F.3d 943, 951 (9th Cir. 2020). Put another way, a suit against someone who is already dead is a nullity. *Id.*

¹ It goes without saying that the "unanimous consent" of all defendants to this removal is not required under the circumstances since it would be difficult indeed to obtain consent from a dead person.

8. Because Plaintiff may not sue dead people, and because the only “live” claims in this case are federal question claims against KSD, this Court may disregard the claims presented against “Collier” and proceed to adjudicate this dispute.

WHEREFORE, Defendant KIRKWOOD R-7 SCHOOL DISTRICT respectfully requests that this Honorable Court effectuate the removal of this action from the Circuit Court of the County of St. Louis County, State of Missouri to the United States District Court for the Eastern District of Missouri, Eastern Division, and for such other relief this Court deems just and proper under the circumstances.

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PROOF OF SERVICE

I hereby certify that I electronically filed on this 16th day of September, 2021, the foregoing with the Clerk of the Court using the CM/ECF system and will serve the following attorneys via U.S. Mail, postage prepaid:

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